

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

ESTATE OF GLOWDENA B.
FINNIGAN,

Plaintiff,

vs.

UNITED STATES OF AMERICA,

Defendant.

CV 18-109-M-DLC-JCL

ORDER

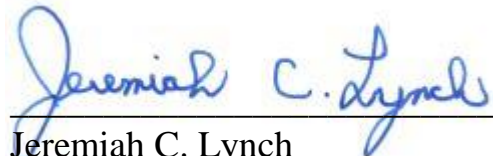
The United States moves to strike three declarations that Plaintiff Estate of Glowdena Finnigan filed with its summary judgment reply brief. The United States requests the declarations be stricken because they support new arguments Plaintiff presents for the first in its reply brief, and because they were filed after the United States filed its brief in response to the summary judgment motion thereby depriving the United States of an opportunity to address the facts in the declarations.

The United States' motion is well-taken. Generally, an argument or legal claim raised for the first time in a reply brief is waived. *Friends of Yosemite Valley v. Kempthorne*, 520 F.3d 1024, 1033 (9th Cir. 2008) (addressing appellate reply brief), and *Alliance for the Wild Rockies v. Weber*, 979 F. Supp. 2d 1118, 1126 (D. Mont. 2013) (addressing summary judgment reply brief).

Nonetheless, a more fully developed factual record will be beneficial to both the parties and the Court in reaching a resolution of the legal and factual issues on their merits. The Court will afford the United States an opportunity to address any new facts and arguments presented by Plaintiff.

Therefore, IT IS ORDERED that the United States' motion to strike the declarations is DENIED. On or before **April 19, 2019**, the United States may file a supplemental summary judgment response brief, together with supplemental evidentiary materials, addressing matters in Plaintiff's reply brief and the new declarations.

DATED this 5th day of April, 2019.



Jeremiah C. Lynch
United States Magistrate Judge